

The Democratic Standard.

DEVOTED TO THE SUPPORT OF THE CONSTITUTION AND LAWS—THE DIFFUSION OF GENERAL INTELLIGENCE—AND THE REFORM OF ALL POLITICAL ABUSES.

BY D. P. PALMER.

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SPEECH OF

HON JOHN W. TIBBATS,

OF KENTUCKY,

On the annexation of Texas—delivered in the House of Representatives January 13, 1845.

(Continued.)

The Supreme Court of the United States, in the case of *Meritt vs. Hunter*, (1 Wheat R. 304—S. C. 3. Peter's Cond. R. 575.) say:

"The government, then, of the United States can claim no powers which are not granted to it by the constitution; and the powers actually granted must be such as are expressly given, or given by necessary implication. On the other hand, this instrument like every other grant, is to have a reasonable construction, according to the import of its terms. And where a power is expressly given in general terms, it is not to be restricted to particular cases; unless that construction grows out of the context expressly or by necessary implication. The words are to be taken in their natural and obvious sense, and not in a sense unreasonably restricted or enlarged."

And Justice Story says, in his Commentary on the Constitution, vol. 2, sec. 425—

"A power given in general terms is not to be restricted to particular cases; merely because it may be susceptible of abuse; and if abused, may lead to mischievous consequences. This argument is often used in public debate, and in its common aspect addresses itself so much to popular fears and prejudices, that it insensibly acquires a weight in the public mind to which it is no wise entitled."

Sec. 427:

"It has been observed with great correctness that, although the spirit of an instrument—especially of a constitution—is to be respected not less than its letter, yet its spirit is to be collected chiefly from the letter. It would be dangerous in the extreme to infer from extrinsic circumstances that a case, for which the words of an instrument expressly provide, shall be exempted from its operation."

The constitution on its face, then on any correct rule of construction that could be applied to it, could not be doubted, authorized Congress to admit Texas into the Union as a State. But the friends of this measure did not fear to travel out of the constitution, into the history of the clause under consideration; into its contemporaneous interpretation; into the practical exposition of it as evidenced by the subsequent action of the government in its various departments. All these sources of information and construction would strengthen, if it were possible to add strength to the plain expression of the constitution itself, the interpretation which he had given to the clause under consideration. The admission of other States was contemplated by the original founders of the republic. It was provided in the 'original article of confederation' as follows:

"Article XI. Canada, according to this confederation, and joining in the measures of the United States, shall be admitted into and entitled to all advantages of this Union, but no other colony shall be admitted into the same, unless such admission be agreed to by nine States."

Thus Canada had the right to admission upon her own act of secession and joining in the measures of the United States—and any other of the colonies could have been admitted by the consent of nine out of the thirteen original States.

In page 216 of the *Federalist*, the author says:

"The eventual establishment of new States, [other than the colonies] seems to have been overlooked by the compilers of that instrument. [the article of confederation.] We have seen the inconvenience of this omission, and the assumption of power into which Congress has been led by it. With great propriety, therefore, the new system supplied the defect."

How did the new system—the constitution as it now stands—supply the defect? The answer is obvious, by giving to Congress the general unrestricted, un-

ambiguous, and unlimited power to admit 'new States into the Union.' But let us look into the proceedings of the convention for the legislative history of the grant of this power. In the propositions submitted to the convention by Mr. Randolph, Mr. Pinckney, and Mr. Paterson, we find the following relating to the power proposed to be granted to congress to admit new States.

Mr. Edmund Randolph's proposition—

"10. Resolved, That provision ought to be made for the admission of States lawfully arising within the limits of the United States, whether from a voluntary junction of government or territory or otherwise, with the consent of a number of voices in the national legislature less than the whole."—4 vol. Elliott's Debates p. 42, and the same as the 14th of his amended resolutions, *ibid.* p. 77.

Mr. Charles Pinckney's proposition:

"Art. 14. The legislature shall have power to admit new States into the Union, on the same terms with the original States provided two-thirds of the members present in both Houses agree."—4 vol. Elliott's Deb. p. 48.

Mr. William Patterson's proposition—

"8. Resolved, That provision ought to be made for the admission of new States into the Union."—4 vol. Elliott's Deb. p. 72.

Mr. Randolph's 14th resolution, as above, was passed unanimously.—Elliott's Deb. 4 vol. 103.

In a draft of a constitution reported by the committee of five, Aug. 6, 1787, (4 Elliott's Deb. p. 127.)

"Art. 17. New States, lawfully constituted or established within the limits of the United States, may be admitted by the legislature into this government; but to such admission the consent of two-thirds of the members present in each House shall be necessary. If a new State shall arise within the limits of any of the present States, the consent of the legislature of such State shall be also necessary to its admission. If the admission be consented to, the new States shall be admitted on the same terms as the original States. But the legislature may make conditions with such new States concerning the public debt which shall be then subsisting."

On this article the following proceedings were had. In 4 vol. Elliott's Deb. p. 103.

"It was moved and seconded to strike out the following words out of the seventeenth article: But to such admission the consent of two-thirds of the members present in each House shall be necessary."

And on the question being taken, it passed in the affirmative—yeas 9, nays 2.

"It was moved and seconded to agree to the following proposition, as a substitute for the seventeenth article:

"New States shall be admitted by the legislature into the Union—but no new State shall be erected within the limits of any of the present States without the consent of the legislature of such State as well as of the general legislature."

Separate questions being taken on the different clauses of the proposition, they passed in the affirmative—yeas 6, nays 4.

And the provision finally assumed the form it now has in the constitution.

Thus we see that the propositions of Mr. Pinckney and Mr. Patterson proposed to grant this power unrestricted as to the situation of the territory—whether it lay within or without the original States, that Mr. Randolph, and of the committee of five, proposed to limit the power to admit new States out of the territory within the limits of the United States, but the limitation which was proposed was rejected by the convention by the adoption of the substitute, which left the power unrestricted as to the position of the territory, as had been originally proposed by Mr. Pinckney and Mr. Patterson.

Justice Story, in his Commentary on the Constitution, vol. 2, sec. 407, says:

"Contemporary construction is properly resorted to to illustrate and confirm the text—to explain a doubtful phrase, or to expound an obscure clause, and in proportion to the uniformity and universality of that construction, and the known ability and talents of those by whom it was given, is the credit to which it is entitled. It can never abrogate the text, it can never fritter away its obvious sense, it can never narrow down its true limitations—it can never enlarge its natural boundaries."—Madison Fed.

To show the contemporaneous construction, however, which had been given to the clause in the constitution, Mr. T. said he would refer the committee to the 14th No. of the *Federalist*, a book which had at all times been regarded as the highest and most unquestionable authority touching the intentions and views of the framers of the constitution. Mr.

Madison, who was the author of that number, says.

"The immediate object of the federal constitution is to secure the union of the thirteen primitive States, which we know to be practicable, and to add to them such other States as may arise in their own bosoms, or in their neighborhood, which we cannot doubt to be equally practicable."

Thus according to the interpretation of this power given by Mr. Madison, the constitution provides, first, for the union of the then existing thirteen primitive States; secondly, for the admission of new States which might arise out of the original States; and thirdly, for the admission of such other States as might arise in the neighborhood of the thirteen primitive States.

The practical exposition which had been given of the meaning of the power under consideration, by the various departments of the government, were at least, in his opinion, the most conclusive and satisfactory source of collateral interpretation, and in this opinion he was glad to find himself sustained by that of the learned jurist to whose commentaries he had had occasion so often to refer.

Justice Story, in his Commentary on the Constitution, vol. 2, sec. 408, says:

"And after all, the most unexceptionable source of collateral interpretation is from the practical exposition of the government itself in its various departments, upon particular questions discussed, and settled upon their own single merits. These approach the nearest in their own nature to judicial exposition; and have the same general recommendation that belongs to the latter. They are decided upon solemn argument, *pro re nata*, upon a doubt raised, upon a *lis mota*, upon a deep sense of their importance and difficulty in the face of the nation, with a view to present action, in the midst of jealous interest, and by men capable of urging, or repelling the ground of argument, from their exquisite genius, their comprehensive learning, or their deep meditation upon the absorbing topic. How light compared with the means of construction are the private speculations of the closet, or the retired speculation of ingenious minds, intent on theory, or general views, and unviewed to encounter a practical difficulty at every step!"

The power to acquire new territory, and the power to admit new States out of territory not within the limits or jurisdiction of the original thirteen States, or within any territory claimed or held by the United States at the time of the adoption of the constitution, has been fully sustained by precedents and practical acts of all the departments of the government, legislative, executive and judicial; by the executive, in the acquisition of Louisiana and Florida, and the repeated efforts which have been made to annex the republic of Texas—by the legislative, in the admission of Louisiana, Arkansas, and Missouri as new States into the union, and the power is fully sustained by the Supreme Court in the case of the *American Insurance Company et al. vs. Canter*, 1 Peter's R. p. 542. Chief Justice Marshall, in delivering the opinion of the court, says—

"The constitution confers absolutely on the government of the Union the powers of making war and of making treaties, consequently that government possesses the power of acquiring territory either by conquest or by treaty."

In the argument of that case Mr. Ogden, who was of counsel for the appellants, assumed these positions—

"The rights of the United States to hold territories not a part of the nation at the time of the confederation, in the same manner as the right to all those within the original thirteen States, is derived from the same universal principles of general law from the powers of making peace and war and of making treaties, &c. It is necessary for the peace of the Union that they should possess those powers."

The third section fourth article of the constitution authorizes the admission of new States into the Union. This section of the constitution gives to Congress a power only limited by their discretion to admit as many States as they may think proper, in what manner soever the territory comprising those new States may have been acquired."

Mr. Webster, who was of counsel for the appellee, did not controvert this doctrine.

But Mr. T. said he would refer the committee to another authority, which he supposed would be entitled to some respect with members on the other side of the House. He alluded to a speech delivered by a distinguished gentleman in the other branch of Congress—by a Senator from Virginia, who stood in the foremost ranks of the opposition. He alluded to a speech delivered by Mr. Archer in the Senate, in the session, in May, 1844, in which he [Mr. Archer] admitted in the broadest terms the power of Congress to admit Texas as a new State into the Union. In that speech, reported in

the Appendix to the Congressional Globe, vol. 11, p. 694, Mr. Archer says:

"He recognized the authority to admit foreign States into the confederacy. He knew the grounds on which this proposition had been denied. This did not hinder his recognition of it. The phrase in the constitution was of the largest character. 'Congress shall have power to admit new States into the Union.' Where shall we find for limitation upon the operation of such language of this generality and comprehensiveness? Not in the circumstances of the case."

He had no hesitations upon this point on the mere language of the constitution. He repudiated this practice, perpetual in its employment here, of going behind the language of the constitution, when it was plain, to contemporaneous history and labored expositions derived from the opinions of individuals. Where ambiguity was not admitted and patent, the language ought to stand as the sole exponent. But how raise an ambiguity on language so explicit? 'Congress shall have power to admit new States into the Union.'"

"It happened, however, that the evidence from contemporaneous history corresponded to the plain import of the language of the constitution."

He (Mr. T.) concurred that he had said enough to place the question of the constitutional power of Congress to admit Texas into the Union as a State, beyond all doubt, by the express letter of the constitution itself, aided (it aid in its interpretation) by all necessary by the articles of confederation—by the proceedings of the convention in relation to the clause under consideration—by the contemporaneous expositions of those who had the principal hand in framing the constitution, and by the various practical expositions in the subsequent action of the various departments of the government.

Having said thus much on the constitutional question, he wished to devote a few moments to the consideration of another position taken by the gentleman from Massachusetts, [Mr. Webster] viz: that it was contrary to our treaty stipulations with Mexico, and derogatory to the honor of this nation, to annex Texas to the Union. However desirable it might be in his (Mr. T.) opinion to make this important and valuable acquisition, he (Mr. T.) declared that he for one, would unhesitatingly abandon it, if it was calculated to place a blot or stain, no larger than a pin's point, upon the bright escutcheon of our national honor.

The treaty with Mexico, in 1823, provides that—

"There shall be a firm, inviolable, and universal peace, and a true and sincere friendship between the United States of America and the United Mexican States, in all the extent of their possessions and territories, and between their people and citizens respectively, without distinction of persons or places."

To see if this position of the gentleman was correct, it would be necessary to ascertain whether Texas was within the extent of the possessions and territories of Mexico. He (Mr. T.) maintained and I believed he could establish beyond all controversy that the reannexation of Texas would be no violation of our treaty stipulations with Mexico—that Texas never was a part of Mexico, except as an independent member of a confederation of States, which now has no existence, and has not had since 1824—5—and that Mexico, as now or ever constituted, never had a just or established right to Texas.

In order to ascertain whether the position taken by him were correct, he would detain the committee while he made a brief statement of facts in the history of Texas.

Texas was first discovered and settled by the French in 1685—five years before any settlement by the Spaniards. Marbois's Hist. of Louis. p. 107. It was granted by Louis of France to the Sieur Anthony Crozat, by grant dated at Fontainebleau, Sept. 14, 1712—and in that grant is described as 'bounded by New Mexico, and by the lands of the English of Carolina.'

New Spain.—This term is used to designate the Mexican provinces, including those in the Provincia Intermedia.—Brooke's Gazetteer, ed. 1823.

New Mexico, province of New Spain, or Mexico in the internal provinces. This is the most northern of the Spanish settlements in the interior of North America. Bounded south by New Biscay or Durango, east by Texas, and on all other sides by regions little known, inhabited by native Indians.—*Ibid.*

Mexico, empire of, an immense region of North America.—This empire is subdivided into intendencies of civil government, consisting of Mexico or Yucatan, Vera Cruz, Oaxaca, Puebla, Mexico, Valladolid, Guadalajara, Guanajuato, Zacatecas, San Louis Potosi, Durango, Sonora, New Mexico, Old California, and New California.—*Ibid.*

Mexico, or New Spain, country of

North America, bounded north by the territory claimed by the United States—east by the United States territory; the Gulf of Mexico, and Guatemala—south-west and west by the Pacific Ocean.—2 vol. Worcester's Gazetteer, ed. 1823.

Mexico or New Spain. Bounded north by unknown regions—east by Louisiana, and the Gulf of Mexico—south by the Isthmus of Darien, which separates it from Terra Firma in South America, west by the Pacific Ocean.

Grand Divisions. Old Mexico, embracing Galicia, Mexico, Guatemala—New Mexico Proper, embracing Apachicola and Sonora, and California on the west a peninsula. Morse's Geography, ed. 1796.

At north lat. 25, 55, west long. w. c. 20 30, the Rio Grande Del Norte falls into the Gulf of Mexico. This is the first great river flowing from the Spanish provinces into the Gulf of Mexico.—Brooke's Gazetteer, ed. 1823.

Mr. Jefferson in his letter to Mr. Bowdoin, 11th July, 1806, Jeff. cor. y. 59, says:

"With respect to our western boundary, your instructions will be your guide. I will only add as a comment to them, that we are attached to the retaining the bay of St. Bernard, because it was the first establishment of the unfortunate La Salle, was the cradle of Louisiana, and more incontestably covered and conveyed to us by France under that name, than any other spot in the country."

St. Bernard's Bay, in the Gulf of Mexico on the coast of Texas. Longitude, 50, w., lat. 28, 3, n.—Worcester's Gazetteer, ed. 1823."

Louisiana was ceded by France to Spain in 1763, and was retroceded by Spain to France in 1800, and occupied by France. By the treaty of Paris of the 30th April 1803, it was ceded by France to the United States, and the possession delivered by the French authorities in 1804.

Mr. Madison expressing his own views and those of Mr. Jefferson, in a letter of the 31st March, 1804, says that Louisiana 'extended westwardly to Rio Bravo, otherwise called Rio Bravo Del Norte.' Orders were accordingly obtained from the Spanish authorities for the delivery of all the posts on the west side of the Mississippi, and in a letter of the 31st January, 1804, Mr. Madison states that M. Laussat, the commissioner by whom the French government delivered the possession of Louisiana to us, announced 'the Del Norte as its true boundary.' In a letter of the 8th July, 1804, Mr. Madison declares the opposition of Mr. Jefferson to the relinquishment of any territory whatever eastward of the Bravo."

Mr. Monroe, in a letter of the 8th November, 1803, encloses documents which he says, 'prove incontestably' that the boundary of Louisiana is 'the Rio Bravo to the west; and Mr. Pinckney unites with Mr. Monroe in a similar declaration, and on the 20th April, 1805, in a letter to Mr. Madison, they assert our title to be unquestionable. Mr. Monroe, in his letters of January 19 and June 10, 1816, says that none could question 'our title to Texas,' and concurs with Mr. Jefferson and Mr. Madison in the opinion 'that our title to the Del Norte was as clear as to the island of New Orleans.'

(Conclusion next week.)

"WHITE LYING," AND ITS VIC-TIMS.

We have not been a little amused, and we think our readers will be, and instructed besides, in the perusal of an account, given in a free and easy epistle from an eastern friend, of the evils of white lying. He tells his own story so well, that we shall plunge at once into his pleasant narrative.

"Walk in and take pot luck with us," said friend A.—In an unlucky moment I accepted the invitation, forgetting that a fine turkey was to be at home. On entering the parlor we met Mrs. A.—who received me very politely, but seemed rather disconcerted when her husband announced that I had dropped in to dine with them. I turned away to give her time to recover her equanimity, but in the opposite glass saw her dart a reproachful look at her spouse, accompanied with a gesture of vexation, and at the same time I saw him elevate his hand in an imploring attitude, and cast at her a beseeching look. All this was seen at a single glance but it was sufficient. I was miserable from that moment. I thought of the turkey, and said to myself, 'What a goose, not to have thought of it before.' But what could I do? It was plain that the good wife had only a poor dinner to offer me, and was greatly mortified thereat. I uttered an internal vow that I would never again accept an informal invitation to dine. I pretended to be looking at some engravings on a centric table, but was all the while trying to invent a scheme by which to extricate myself from my unpleasant position; and had nearly come to the conclusion that I would suddenly pretend to recollect a previous engagement, when a domestic announce-

ed that dinner was ready. I was too late—in another minute I was in the dining room—and there I smelt 'em out! I was about to partake of a salt fish dinner. My heart smelt within me of the thought that I had left a real gobbler at home to come here and dine on 'Cape Ann turkey.' Of all the articles interspersed on a dinner table, I most abhor the boiled salt fish; and now it was to be seasoned with the sauce of misery and the pepper of domestic irritation. 'I must get rid of these two lads, ingredients, at any rate,' thought I. 'and the only way to accomplish it is to swallow the turkey with good grace.' 'Shall I help you to some fish,' said the lady. 'Certainly,' replied I; 'there is nothing of which I am so fond.' Here I observed her countenance to brighten. 'Some onion?' 'Thank you, yes, I always eat onions with fish.' (Face brighter still.) 'Beets?' 'carrot?' 'parsnip?' 'Yes, yes.' (Another shade vanished.) 'Eggs?' 'butter?' 'potatoes?' &c. 'Yes, that's exactly right; you understand these things, I see; I could not be suited better, what a lucky fellow I was, A—, to fall in with you to day!'

'By this time his wife's face was as bright as a sunny day in May, and the perturbation so long visible on the countenance of my friend had given place to a smiling calm. I felicitated myself on the happy turn of affairs, and the thought of having made my entertainers easy almost made me happy myself; almost, but not quite, for right before me lay an enormous plate of salt fish and accompaniments, which I most devoutly as a truth of my declaration, that 'there was nothing of which I was so fond as a salt fish dinner.' I put on a smiling face and addressed myself to the task. Mustard and vinegar alone saved me from loathing. Host and hostess were now on excellent terms with each other and with me; and we discussed at large the merits of dun fish, pickled fish, pollock, hake, eel, haddock, and salmon; also lump, halibut, mackerel, lobster, shad and trout; but we unanimously agreed that the fish was nothing so delicious as the dun cod fish, served up exactly like the one on which we were then dining! By and by my friend brought forth a bottle of excellent Madeira and some fine Havana. We were quite a happy party—and when I reflected that this was owing entirely to a little innocent falsehood of which I had been guilty, I took great credit for my benevolent artifice and thought, 'Here is a case which would prove, even to Miss Edgeworth, that good can come out of a white lie.' Just then the voice of that dear, good woman seemed to whisper, 'Wait a little.'

Just a fortnight from that day I received from A—a written invitation to dine with him—to which, owing to an unfortunate repugnance to say 'no,' which is my besetting sin, I returned an affirmative answer. To tell the truth I had no objection; for I thought it likely that he was going to show me that he did dine sometimes on other things than salt fish. I expected a sumptuous dinner and was accordingly very punctual. There was no frowns now—no gesture of vexation—no perturbed visage—all seemed smiling, peaceful, happy. There was an air of ill-concealed triumph in the countenances of my friends, which seemed to say, 'We will show you to day what a good dinner is.' I expected venison, at least. 'Dinner is ready, if you please, mam,' said the servant—and we proceeded at once towards the dining room. I was a little surprised that there was no guests except myself, for I had expected to meet a large company—but, on reflection, I felt it a higher compliment to be invited to dine alone with my friends—on venison. How kind they were! By this time we were in the hall. 'Is it possible,' thought I, 'that the odor of that salt fish dinner can have hung about this place for a fortnight! It's rather too strong for that. It can't be that we are to dine on salt fish again to day!' My doubts increased at every step. We entered the dining room, my friend a little before me, as if to prevent my seeing what was on the table, until I was close to it; when he stepped aside, and she withdrew her arm from mine; and both turned and looked, first at the table and then at me, with an air of mingled triumph and friendship, which was particularly vexatious—for on the table lay a dinner identical with the one of which I had reluctantly partaken a fortnight before! The blood rushed to my face—as if determined to find vent there, and as suddenly retreated. A seat was most acceptably. I am sure I looked very pale, for I felt as if fainting—but recovering soon, I complained of being subject to vertigo, declared I had not felt well all day, and made thin 'white lie' a plea for eating very sparingly. During the whole time I sat at the table I could not get Miss Edgeworth out of my mind. 'She is avenged,' thought I—'my white lie has brought its own punishment.'

Not long after this I was again invited